UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

JOHN DOE,	)	
	)	
PLAINTIFF	)	
	)	
v.	)	**Civil No. 99-111-P-H**
	)	
CUMBERLAND COUNTY, ET AL.,	)	
	)	
DEFENDANTS	)	

ORDER ON CUMBERLAND COUNTY DEFENDANTS' MOTION TO DISMISS

This case involves the scope of constitutional protection against defamation and invasion of privacy in the context of information about HIV-related exposure and resulting speculation about an individual's physical condition. I conclude that the plaintiff has failed to state a federal claim upon which relief can be granted and that the Cumberland County defendants'[1] motion to dismiss under Fed. R. Civ. P. 12(b)(6) must be **GRANTED**.

According to the Amended Complaint (Docket Item 1A), the plaintiff John Doe was an employee of the Cumberland County Sheriff's Office. Amended Compl. at ¶ 4. He was exposed to a jail inmate who "had contagious diseases and was HIV-positive." Id. at ¶ 5. As a result, the plaintiff had to undergo medical care. Id. at ¶ 6. He alleges that while he was away from work, Sheriff's Office employees talked about "private and confidential information concerning the

[1] The parties who have filed the motion to dismiss and to whom I collectively will refer as the "Cumberland County defendants" are Cumberland County, Michael Vitiello, Charles LaRou, Jeffrey Newton, and Ronald Roes 1-10.

exposure," id. at ¶ 7, and the need for and details of his medical care and his condition, id., with the result that many employees and others falsely concluded that he had contracted the AIDS virus. Id. at ¶ 8. In Count I, he alleges that the "conversations and communications of information about plaintiff's physical condition and his exposure to contagious diseases, including the AIDS virus," id. at ¶ 12, violated a constitutional right to privacy under 42 U.S.C. § 1983. In Count II, he alleges that the statements were false and defamatory entitling him to a defamation claim under 42 U.S.C. § 1983. In Count III, he makes a claim against Cumberland County itself for failure to have a policy or failure to have trained its employees on the subject of disclosure of "medical and other personal information about County employees." Id. at ¶ 20.

There is more detail in the court file concerning what allegedly happened here, because a different defendant—Prison Health Services, Inc., a health services provider—has brought a motion for summary judgment. See Mot. of Def. Prison Health Services, Inc. for Summ. J. (Docket Item 5). The motion by the Cumberland County defendants, however, is a 12(b)(6) motion to dismiss for failure to state a claim and I therefore deal with the allegations of the Amended Complaint, not the evidentiary material. I read the allegations in a light most favorable to the plaintiff, but also in the context of statements that the plaintiff makes in responding to the motion to dismiss. In that connection, the plaintiff's objection to the motion to dismiss informs me that the plaintiff "was exposed to the bodily fluids of an inmate who was HIV-positive, and had AIDS and other contagious diseases," Pl.'s Objection to Cumberland County Defs.' Mot. to Dismiss ("Plaintiff's Objection") (Docket Item 13) at 1, and that "[a] few employees of the Sheriff's Office learned about the exposure and told others, and many statements were made between and among these employees speculating that plaintiff was HIV-positive or actually had contracted AIDS." Id. Thus, it is apparent that the

plaintiff contends that County employees shared information about an incident that took place in which he was subjected to bodily fluids of an HIV-positive inmate while he was on duty as a Sheriff's Office employee, and that thereafter County employees speculated about the medical consequences for the plaintiff. He reiterates this description of his claim as follows: "He has alleged that, by disclosing information about the incident to their co-employees and speculating on plaintiff's HIV status, the individual defendants violated [ ] [his constitutional] interest." Plaintiff's Objection at 6 (footnote omitted).

COUNT I—CONSTITUTIONAL PRIVACY INTEREST

The plaintiff claims that under 42 U.S.C. § 1983 he can recover damages for invasion of a constitutionally-protected privacy interest. Specifically, he argues that Whalen v. Roe, 429 U.S. 589 (1977), recognizes an "'individual interest in avoiding disclosure of personal matters.'" Plaintiff's Objection at 4 (quoting Whalen, 429 U.S. at 599).[2] He also refers to lower court decisions to the same effect. The cases the plaintiff cites, however, deal with access to what might be considered private information. Here, in contrast, the information that the co-employees allegedly shared was about the exposure incident, an event that was not private or confidential because it happened in the course of guarding an inmate while the plaintiff was on duty. The rest of the plaintiff's claim is based on the subsequent speculation or gossip by his co-employees concerning what might be the

[2] The First Circuit held in 1987 that as of June 17, 1983, the parameters of the constitutional right of privacy the plaintiff asserts here were not "clearly established" and that qualified immunity therefore protected state actors against such a lawsuit. Borucki v. Ryan, 827 F.2d 836, 844-45 (1st Cir. 1987). Since then, the Supreme Court has made clear that a court is first to determine whether there is a constitutional right before addressing the issue of whether it is clearly established. See Conn v. Gabbert, ___ U.S. ___, 119 S. Ct. 1292, 1295 (1999); see also Wilson v. Layne, ___ U.S. ___, 119 S. Ct. 1692, 1697 (1999); Siegert v. Gilley, 500 U.S. 226, 232-33 (1991).

medical consequences of his exposure. That speculation or gossip may have been unprofessional. It may even have been defamatory. But speculation or gossip about the consequences of an incident that was not private is not a constitutional invasion of privacy.[3] The plaintiff has not alleged an actionable invasion of a constitutional privacy right, and Count I must be dismissed.

COUNT II—DEFAMATION

The plaintiff also claims § 1983 damages for unconstitutional defamation. The law in this area is established by Paul v. Davis, 424 U.S. 693 (1976). In Paul v. Davis, the Supreme Court made clear that defamation alone does not make out a constitutional claim. In Paul v. Davis, two police departments improperly labeled the plaintiff as a shoplifter, but the Court ruled that he had no federal constitutional cause of action. Although the defamatory statement about shoplifting had been issued, the state had not attached any consequences to it; instead, it was left to private shopkeepers to decide what to do about it. The Supreme Court distinguished an earlier case, Wisconsin v. Constantineau, 400 U.S. 433 (1971), where it had recognized a cause of action for a person who had been labeled an abuser of alcohol. The Paul v. Davis Court explained the distinction between the two cases as

[3] Although ¶ 7 of the Amended Complaint might have been read to assert that somehow co-employees obtained access to private and confidential information about the details of the plaintiff's medical care and publicized those details, see Amended Compl. at ¶ 7, the Plaintiff's Objection characterizes it more narrowly as: "A few employees of the Sheriff's Office learned about the exposure and told others, and many statements were made between and among these employees speculating that plaintiff was HIV-positive or actually had contracted AIDS. A. C., ¶ 7." Plaintiff's Objection at 1; accord Objection at 6. (In another context, the plaintiff has also qualified a broad assertion of his Amended Complaint. Compare Plaintiff's Objection at 1 with Amended Compl. at ¶ 17.) If the plaintiff's claim is actually based on the dissemination of confidential medical records that he had not voluntarily disclosed on his own, I would expect the plaintiff's brief to make that stronger position explicit, rather than to use the apparently carefully chosen language I have quoted from pages 1 and 6 of his Objection. If I have unfairly read the plaintiff's argument on this issue (I do not believe I have) and if the plaintiff can make the proper assertions concerning disclosure of medical records under Fed. R. Civ. P. 11, I can consider the matter on a motion to amend the complaint.

follows: In Wisconsin v. Constantineau, the state had also prohibited the plaintiff from buying alcohol and thereby had "significantly altered her status as a matter of state law." Paul v. Davis, 424 U.S. at 708. "[I]t was that alteration of legal status which, combined with the injury resulting from the defamation, justified the invocation of procedural safeguards." 424 U.S. at 708-09. But defamation "standing alone" was not sufficient. Id. at 709.

Here, I will assume without deciding that the plaintiff has been defamed or stigmatized by the alleged statements that he contracted AIDS. Nevertheless, Cumberland County attached no consequence to that inappropriate labeling. Indeed, the plaintiff has explicitly disavowed any claim that the "defendants acted wrongfully in causing him to lose his job" or prevented him from getting other employment as a result. Plaintiff's Objection at 1. Instead, this is a pure defamation case which, under Paul v. Davis, is not entitled to federal constitutional protection. The plaintiff seeks to distinguish Paul v. Davis by saying that the combination of a privacy invasion and a defamation create the "stigma plus" that Paul v. Davis requires. See Plaintiff's Objection at 8. Assuming without deciding that this would be enough to meet the Paul v. Davis requirement, for the reasons I have already given the plaintiff has not successfully asserted a federal constitutional invasion of privacy claim. As a result, Count II must also be dismissed.

COUNT III—CLAIM AGAINST THE COUNTY

Because the plaintiff has not stated a claim that any state actors violated his constitutional rights, his claim against the County for failure to provide a policy or training that would prevent such misconduct must also fail. See Evans v. Avery, 100 F.3d 1033, 1039-40 (1st Cir. 1996), cert. denied, 520 U.S. 1210 (1997).

CONCLUSION

As a result, Counts I, II and III of the Amended Complaint are **DISMISSED**.

Count IV remains against the defendant Prison Health Services, Inc. ("PHS"). A motion for summary judgment has been filed by PHS on this Count which involves solely Maine law. There is no independent assertion of federal jurisdiction over this Count or this defendant aside from the court's supplemental jurisdiction premised on the first three claims. The defendant PHS shall **SHOW CAUSE** within seven (7) days why I should not remand this Count to the state court from which the matter was initially removed.

SO ORDERED.

DATED THIS 9TH DAY OF JULY, 1999.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE